

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES and JODETTE ATWATER,

Plaintiffs,

Civil Case No.
12-CV-15332

vs.

HON. MARK A. GOLDSMITH

BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., et al.,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION

This matter is presently before the Court on Plaintiffs' motion for reconsideration of the Court's July 8, 2013 order dismissing this case. For the reasons that follow, the Court will deny the motion.

On May 28, 2013, Defendant Bank of New York Mellon Trust Company, N.A. filed a motion for summary judgment. The Court thereafter issued a notice of hearing setting the matter for oral argument. Plaintiffs failed to file a response brief, or to request an extension of time to do so, prior to the deadline set forth in the Court's Local Rules. Consequently, on June 28, 2013, the Court issued an order adjourning the upcoming motion hearing and requiring Plaintiffs to show cause in writing by July 3, 2013 "why the claims that are the subject of the pending motion should not be dismissed for lack of prosecution pursuant to Federal Rule of Civil Procedure 41(b)." In the show cause order, the Court warned Plaintiffs of the consequences of any failure to respond to the show cause order:

Should Plaintiffs fail to timely respond to this order, the Court will (i) construe Plaintiffs' silence as reflective of a clear intent to abandon the claims that are the subject of the pending motion, and (ii) dismiss those claims pursuant to Rule 41(b) with prejudice.

Because Plaintiffs failed to respond to the show cause order by the July 3 deadline, the Court issued an order on July 8, 2013 dismissing the case with prejudice. A judgment was also issued on that date.

On July 22, 2013, Plaintiffs filed a motion under Local Rule 7.1(h) for reconsideration of the Court's July 8 dismissal order. Plaintiffs request that this matter be reinstated to the Court's active docket and that the matter be allowed to proceed. Plaintiffs state that they did not file a response to Defendant's May 28 motion for summary judgment because they thought they had more time to do so.¹ Plaintiffs also explain that they failed to respond to the Court's June 28 show cause order because Plaintiffs' counsel mistakenly calendared the response deadline as July 31 instead of July 3. Plaintiffs ask the Court to impose "alternative ramifications" for their actions instead of allowing the judgment to stand; they argue that setting aside the judgment "will not prejudice the opposing side."

To prevail on a motion brought under Local Rule 7.1(h), Plaintiffs "must not only demonstrate a palpable defect by which the court and the parties . . . have been misled but also show that correcting the defect will result in a different disposition of the case." E.D. Mich. LR 7.1(h)(3). As Defendant correctly points out, Plaintiffs have not attempted to establish that the result of this case would be different if the Court were to grant the motion for reconsideration. This showing is required under Rule 7.1(h), and is of paramount importance here where Defendant has advanced particularly strong arguments – especially its arguments that the case is barred by the doctrine of res judicata – in its summary judgment motion. Because Plaintiffs have not demonstrated an entitlement to relief under Rule 7.1(h), the motion for reconsideration is denied.

¹ Plaintiffs explain that Defendant filed a supplemental brief to their motion on the date on which Plaintiffs' response brief was due and that "[i]t was Plaintiffs' understanding that Plaintiffs had additional time to respond to Defendants' motion" due to the filing of the supplemental brief. However, Plaintiffs offer no authority – and the Court is aware of none – that a moving party's filing of a supplemental brief would extend the responding party's time to answer the motion. If Plaintiffs in fact had such an understanding, it was plainly unreasonable.

SO ORDERED.

Dated: August 21, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 21, 2013.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager